

Understanding Bail: A Lifeline for the Accused

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The right to a fair trial is one of the cornerstones of justice, yet for many marginalized communities, particularly those incarcerated in prisons, accessing this fundamental right remains a significant challenge. Legal aid, especially in the context of securing bail, plays a vital role in ensuring that individuals facing criminal charges are not subjected to prolonged imprisonment without due process. The LAW Foundation, an organization dedicated to facilitating socio-legal aid to marginalized communities, focuses on ensuring that individuals who are incarcerated behind the four walls of prison have the opportunity to access bail and, ultimately, a fair chance to defend themselves in court. This article delves into the concept of bail, its importance in the legal system, and how legal aid organizations like the LAW Foundation play a critical role in securing this right for individuals who might otherwise be deprived of it.

What is Bail?

Bail is a legal procedure that allows an accused person to be released from jail while awaiting trial or the conclusion of their case. It serves as a temporary release, providing the accused the opportunity to remain free, under certain conditions, until their court hearing. The purpose of bail is to ensure that a person does not have to stay in jail unnecessarily, especially if they are not yet proven guilty.

The right to bail is rooted in the principle of presumption of innocence, which means that every person is considered innocent until proven guilty. The idea is that being accused of a crime should not automatically strip a person of their freedom unless there is a compelling reason to keep them in custody, such as the risk of them fleeing, tampering with evidence, or committing further offenses.



Legal Position of Bail:

The term 'bail' has not been defined either in the abolished Criminal Procedure Code or the replacing law i.e. Bhartiya Nagarik Suraksha Sanhita 2023 (BNSS). Terms like bailable offense and non-bailable offense are the only ones that are defined under BNSS, 2023.

For the purpose of bail, the offenses are categorized into two sects:

a. Bailable Offence: Under Section 2(b) of BNSS 2023 a bailable offense means an offense which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force. A person accused of bailable offense at any time while under arrest without a warrant and at any stage of the proceedings has the right to be released on bail. Some examples of bailable offenses include: theft, causing hurt, mischief, defamation, simple assault, stalking, bribery, and public nuisance.

b. Non-bailable offense: Under Section 2(b) of BNSS 2023 it means any other offense. Non-bailable offenses are serious offenses where bail is a privilege and only the courts can grant it. On being arrested and taken into custody for a serious or non-bailable crime, a person cannot ask to be released on bail as a matter of right. In the case of a non-bailable offense the police cannot release anyone on bail and so the arrested person has to make an application for bail before a magistrate or court. After consideration of factors such as the seriousness of the offense, the chances that the accused will interfere with the investigation by tampering with evidence or threatening witnesses or if the accused is likely to go into hiding or leave the country to escape, the court will decide whether he/she can be allowed to be let out on bail or not. Some examples of non-bailable offenses include Murder, Rape, Dacoity, and Kidnapping.

Why is Bail Important?

Imagine being arrested and taken to jail for a crime you may not have committed. You are locked away from your family, unable to work, and left with little control over your life. This is where bail becomes crucial. Bail allows you to continue your life while your case moves through the court system. It gives you the chance to prepare for your defense, take care of your family, and avoid the hardships of being in jail for an extended period.

Types of Bail

Bail is not a one-size-fits-all concept; there are different types based on the nature of the offense and the circumstances of the accused. Here are the common types of bail:

Regular Bail: This is the most common type of bail granted by the court after an arrest. It allows the accused to remain free while awaiting trial, provided they comply with certain conditions set by the court. A person can apply for anticipatory bail under sections 482 and 483 of BNSS, 2023.



Anticipatory Bail: This type of bail is sought before an arrest. It is granted when a person anticipates that they might be arrested for a non-bailable offense. The accused must apply to a higher court (Sessions Court or High Court) for anticipatory bail.

Anticipatory bail helps individuals avoid arrest and allows them to approach the court for regular bail without being taken into custody first.

Interim Bail: This is a temporary bail granted for a short period, usually until the court can decide on a regular bail application. It is often used when there is an urgent need for the accused to be released temporarily.

PR Bond (Personal Recognizance Bond): In some cases, instead of paying money or surety, the court allows the accused to sign a bond promising that they will appear for all court hearings. This is called a Personal Recognizance Bond.

Default Bail: Default bail, also known as statutory bail, is a species of bail which accrues as a right to an accused detained in custody, when the police fail to or are unable to complete the investigation and file the chargesheet within the time frame stipulated under the law.

The concept of default bail is enshrined under and governed by Section 187 of BNSS. Per sub-section 2 of Section 187, a Magistrate to whom an accused is forwarded under Section 187, may authorize detention of such accused when investigation has not been completed within the 24-hour mandate, for a term not exceeding fifteen days in the whole. A further mandate, under the proviso to Section 187(2), is that on expiry of such authorized detention, which may be extended to a period of 90/60 days as may be applicable, depending on the nature of the offense alleged, an accused shall be released on bail if he is prepared to and does furnish bail.

The Bail Process: Step by Step

Let's break down the process of getting bail in a way that is easy to understand:

Filing a Bail Application: When someone is arrested, their lawyer can file a bail application in court. The application outlines why the accused should be granted bail, such as their clean record, ties to the community, or health issues.

Hearing on the Bail Application: The court holds a hearing where the prosecutor (representing the state) argues why the accused should remain in custody, while the defense lawyer argues why they should be released on bail.

The judge considers factors like the seriousness of the offense, the risk of the accused fleeing, and whether they might tamper with evidence or intimidate witnesses.

Bail Order: If the judge decides in favor of bail, they issue a bail order. This order specifies the conditions of the bail, such as the amount to be paid (bail bond), the need to report to the police station regularly, or surrendering the passport.

Furnishing the Bail Bond: The accused or their family must furnish a bail bond, which usually involves depositing money or property as a guarantee that the accused will appear in court. If the bond is not furnished, the accused remains in jail despite being granted bail.

Release from Custody: Once the bail bond is furnished, the jail authorities are notified, and the accused is released. However, they must comply with all conditions set by the court.

Challenges in the Bail System:

While the concept of bail is straightforward, many challenges can prevent individuals from benefiting from it:

Lack of Legal Knowledge: Many people, especially those from marginalized communities, do not understand the bail process. They might not know how to apply for bail or may not have access to competent legal representation.

Financial Barriers: In many cases, the bail amount set by the court is too high for the accused or their family to afford. This turns bail into a privilege for the wealthy, while the poor remain behind bars.

Procedural Delays: Even after securing bail, the process of furnishing the bail bond can be delayed due to paperwork, lack of proper legal guidance, or inefficiencies in the system.

The Role of Legal Aid and Organizations:

The work of legal aid organizations, like the LAW Foundation, is crucial in addressing these challenges. They provide free legal assistance to those who cannot afford a lawyer, helping them navigate the complex bail process and advocating for their release.

Conclusion :

Bail is a fundamental right and an essential part of our justice system, designed to balance the interests of the accused with the need to maintain public safety. However, the challenges in accessing bail, especially for the poor and marginalized, point to deeper systemic issues that need urgent reform. Ensuring timely legal aid, simplifying the bail process, and addressing financial barriers are crucial steps toward a fairer and more just system.



Shalini is an advocate with an LL.M. in Intellectual Property Rights (I.P.R.) and serves as a dedicated law officer at the organization. She specializes in criminal law, domestic violence cases, and family matters, advocating for fair trials and securing over 15 acquittals.

She has appeared in approximately 350 cases, successfully obtaining bail in nearly 250 instances. Shalini's passion lies in creating impactful change by ensuring justice and upholding the rights of the marginalized.
